



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FETHERSTONHAUGH - SMART & BIGGAR
1000 DE LA GAUCHETIERE WEST
SUITE 3300
MONTREAL QC H3B 4W5 CA CANADA

COPY MAILED

MAR 10 2005

OFFICE OF PETITIONS

In re Application of :
Laliberte, et al. :
Application No. 10/666,054 : DECISION GRANTING PETITION,
Filed: September 22, 2003 :
Attorney Docket No. 86267-34 :

This is a decision on the petition filed January 19, 2005, to have the Filing Receipt corrected to reflect the priority claim to a prior-filed provisional application.

The petition is **granted**.

On September 22, 2003, the above-cited application was filed. In the declaration for the subject non-provisional application, a claim was made for priority to provisional application 60/411,387 filed September 18, 2002. After receiving a filing receipt without the inclusion of the priority data, applicant filed a request for corrected filing receipt requesting inclusion of the same. On October 6, 2004, a Response to Request for Corrected Filing Receipt was mailed indicating the priority data would not be included because the provisional application to which the subject non-provisional application claimed priority was filed more than twelve months after the prior filed provisional application. The instant petition requesting inclusion of priority data was filed, accordingly.

Petitioner maintains that the subject non-provisional application was mailed on September 17, 2003. Petitioner further maintains that Thursday, September 18, 2003, and Friday, September 19, 2003, were declared federal holidays in the District of Columbia due to adverse weather, therefore; the earliest filing date that could be accorded the application was September 22, 2003. Petitioner further argues that, pursuant to 37 CFR 1.7, the twelve-month term of the provisional application was extended to September 22, 2003, because of the declared federal holidays and the weekend that followed. Accordingly, petitioner concludes that a claim of priority can be made to the provisional application because the non-provisional application was filed within the twelve-month term of provisional application.

It is determined that the term of the provisional application is extended to September 22, 2003, because of the declared federal holidays and the ensuing weekend. Petitioner is, therefore, entitled to make a claim of priority to provisional application 60/411,387. Although the Patent and Trademark Office detected the priority claim in the declaration, petitioner is cautioned that a correct claim for priority must be included in an Application Data Sheet or in the first sentence of the specification, pursuant to 37 CFR 1.78. If the priority claim in the oath had not been detected within the period defined in 37 CFR 1.78, petitioner would have had to file a petition under 37 CFR 1.78(a)(6) to have the priority claim included and pay the surcharge.

Pursuant to this decision, a replacement filing receipt is enclosed.

The granting of this petition should not be construed as meaning the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119(e) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

The application file is being directed Technology Center 3700, GAU 3725 for further processing.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Replacement Filing Receipt